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DISTRICT III

January 30, 2024

To:

Hon. James C. Babler
Circuit Court Judge
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

David J. Susens
Electronic Notice

Brian H. Wright
Electronic Notice

Danielle A. West
26488 W. Mondovi Street
Eleva, WI 54738

You are hereby notified that the Court has entered the following opinion and order:

2021AP1928-CRNM	State of Wisconsin v. Danielle A. West
2021AP1929-CRNM	(L. C. Nos. 2019CF124, 2019CF146, 2020CM150)
2021AP1930-CRNM	

Before Stark, P.J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Appointed counsel² for Danielle West has filed a no-merit report concluding that no grounds exist to challenge West's convictions for possession of amphetamine, disorderly conduct, criminal trespass, and criminal damage to property. West was informed of her right to file a response to the no-merit report, and she has not responded.

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted

² The no-merit report was filed by Attorney Cary Bloodworth, who has been replaced by Attorney David J. Susens as West's appellate counsel.

In Barron County case No. 2019CF124, the State charged West with possession of methamphetamine, possession of tetrahydrocannabinols, possession of drug paraphernalia, and disorderly conduct. The complaint alleged that when West attempted to pick up her daughter from school, staff alerted police because they were concerned about West's mental state. When law enforcement confronted West, she began yelling obscenities at the officers and nearby students. West was arrested and her car was impounded. During an inventory search of the car, police found drugs and drug paraphernalia.

In Barron County case No. 2019CF146, the State charged West with disorderly conduct, criminal trespass, and felony bail jumping. That complaint alleged that while West was released on bond in case No. 2019CF124, she was at a residence walking in and out of the home's garage yelling and screaming, and threatening to shoot someone. After one of the homeowners called 911, West entered a vehicle belonging to the homeowner and continued to yell and scream. When police arrived, West was still yelling and screaming inside the vehicle.

West's trial counsel raised the issue of West's competency to proceed. The circuit court granted defense counsel's request for a competency examination. An examining psychologist submitted a report opining that West was not competent to proceed but that she was likely to regain competency with treatment. After a hearing, West was committed, and following a period of commitment, the court determined that her competency was restored.

In Barron County case No. 2020CM150, the State charged West with criminal damage to property and disorderly conduct, arising from allegations that West threw a shovel at the window of her ex-boyfriend's home after he refused to let her inside. Pursuant to a global plea agreement, West entered no-contest pleas to disorderly conduct and an amended count of

possession of amphetamine in case No. 2019CF124; criminal trespass in case No. 2019CF146; and criminal damage to property in case No. 2020CM150. In exchange for her no-contest pleas, the State agreed to recommend that the circuit court dismiss and read in the remaining counts from these cases, as well as charges in two other cases. The State also agreed to join in defense counsel's recommendation that the court withhold sentence and impose two years of probation on all counts. Out of a maximum possible sentence of two years and nine months, the court withheld sentence and imposed two years of probation on all counts, consistent with the joint recommendation.

The no-merit report addresses whether there are any grounds to challenge the circuit court's competency determination, whether West knowingly, intelligently, and voluntarily entered her no-contest pleas, and whether the court properly exercised its sentencing discretion. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that there is no arguable merit to any of these issues. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further. Additionally, with some exceptions not relevant here, West's valid no-contest pleas waived all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court questioned whether there were any grounds for trial counsel to pursue a suppression motion in Barron County case No. 2019CF124, based on the inventory search that followed the impoundment of West's vehicle. In *State v. Brooks*, 2020 WI 60, 392 Wis. 2d 402, 944 N.W.2d 832, our supreme court determined that police were not exercising a bona fide

community caretaker function when they impounded a vehicle that was lawfully parked along the side of the road. *Id.*, ¶20.

In *State v. Asboth*, 2017 WI 76, 376 Wis. 2d 644, 898 N.W.2d 541, our supreme court addressed the impoundment of a vehicle at a storage facility following the driver's arrest. *Id.*, ¶4. There, the vehicle was blocking access to multiple units at the storage facility, and if the vehicle were left at the facility, it would have inconvenienced the owner of the storage facility, as well as the customers. *Id.*, ¶¶4, 18. The vehicle was also likely to be left unattended for an extended period of time based on the defendant's arrest and his having been the only occupant of the vehicle. *Id.*, ¶¶19-20. Thus, considering those circumstances, our supreme court concluded that the police were acting within their community caretaker function in impounding the vehicle. *Id.*, ¶1.

Here, it was unclear from the record where West's vehicle was located at the time of her arrest and, thus, whether it could have safely remained unattended. Therefore, we directed appellate counsel to file a supplemental no-merit report addressing why it would be wholly frivolous to pursue a challenge to the effectiveness of trial counsel. Counsel filed a supplemental no-merit report with an attached incident report stating that at the time of her arrest, West's vehicle was parked in the school's bus loading area. After consultation with school officials, law enforcement determined that the vehicle had to be towed because it was illegally parked, it was impeding both bus and foot traffic and, given West's arrest, the vehicle was likely to be left unattended for an unknown period of time. Based on our review of the supplemental no-merit report and attached incident report, we agree with counsel's conclusion that law enforcement was acting within their community caretaker function in impounding the vehicle. *See Asboth*,

376 Wis. 2d 644, ¶1. Any claim that trial counsel was ineffective by failing to pursue a suppression motion based on the inventory search of West's vehicle would therefore lack arguable merit.

Our independent review of the records discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney David J. Susens is relieved of his obligation to further represent Danielle West in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals